CF0000058147

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

High Court of Madhya Pradesh
JABALPUR
- 9 JUN 1995
Reg. No. 268
Recpt. Clerk
High Court, Jabalpur

APPEAL OF PRISONER

No. 2221/47 Name [illegible]

Father's name [illegible]

Residence [illegible] Age [illegible]

Sentenced to [illegible] On [illegible]

Under section [illegible] by [illegible]

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement [illegible]

2 Date on which copy received [illegible]

3 Date on which Appeal sent [illegible]

4. Whether the prisoner wishes to be represented or ~~not~~ – Yes / No

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No. [illegible] Name [illegible]

Confined in [illegible] Jail [illegible]

No. [illegible] - Dated [illegible] 1995

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ [illegible] together which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

[illegible]

Superintendent
[illegible]

Date of receipt in [illegible] office [illegible]

Date of receipt record to accompany the [illegible]

Memo of Appeal to the Appellate court [illegible]

No [illegible] Dated [illegible] 199[illegible]

Forwarded to the [illegible]

[illegible]

Date of receipt in Appellate Court [illegible]

(P. T. O.)

(15)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.App.No.831/95 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C. BHADOO &
HON'BLE MR.DHIRENDRA MISHRA, JJ

08.02.2006

Shri C.R. Sahu, Advocate for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri Sachin Singh Rajput, Dy. Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J.

Accused/appellant Makhan has preferred this appeal questioning the legality & correctness of the judgment of conviction & order of sentence dated 12.5.1995 passed by learned Sessions Judge, Rajnandgaon in Sessions Trial No.49/94 whereby learned Sessions Judge after holding the accused/appellant guilty for commission of murder of Chhotu @ Tuntun @ Rajesh convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life.

The prosecution case, in brief, is that PW-1 Nemichand lodged a report (Ex.P-1) in the Police Station Dongergarh, District Rajnandgaon to the effect that on 27.3.1994 at about 4.00 p.m. Panchobai, Nelobai, Geetabai & Sudama (PW-2) were sitting in front of the house of Ramdas and he was also standing there. At that time, he saw that deceased Chhotu @ Tuntun @ Rajesh was running and accused Makhan was chasing him

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carrying swordstick (Gupti) in his hand. Deceased Chhotu @ Tuntun @ Rajesh was saying that accused Makhan has burst ~~his~~ kettledrum (Nagada), therefore, he has to pay the money, on which accused/appellant chased the deceased and attacked him with the swordstick (Gupti) on his neck, as a result of which Chhotu @ Tuntun @ Rajesh fell down and died spontaneously. Accused/appellant also rushed towards him. On receiving this report, Station House Officer, Police Station Dongergarh registered the case under Section 302 of the Indian Penal Code and took up the investigation. He took into possession the burst kettledrum (Nagada) under Ex.P-2 and also recovered the swordstick (Gupti), weapon of offence under Ex.P-3 from the house of accused/appellant in pursuance of the memorandum (Ex.P-13) given by the accused/appellant. He also prepared the Panchnama (Ex.P-7) of the body of deceased Chhotu @ Tuntun @ Rajesh and sent the body for postmortem examination to Community Health Centre, Dongergarh under Ex.P-10, where Dr. A.K. Tamrakar (PW-8) conducted postmortem on the body of deceased and prepared the postmortem report Ex.P-10A, in which he opined that there was a stab injury perforating trachea leading to respiratory distress, death injury is caused by hard & sharp edged weapon and the death is homicidal in nature. Site plan (Ex.P-12) of place of occurrence was prepared by the Patwari. Recovered articles were sent for chemical examination to Forensic Science Laboratory, Raipur, from where report Ex.P-16 was received.

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After completion of investigation, charge sheet was filed in the Court of learned Judicial Magistrate First Class, Dongergarh who in turn committed the case to learned Sessions Judge, Rajnandgaon for trial.

The prosecution in order to prove the charge against the accused/appellant examined nine witnesses. Statement of accused/appellant was recorded by learned Sessions Judge under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent, he has been falsely implicated in the crime and witnesses have deposed against him on account of animosity.

Learned Sessions Judge after hearing the Additional Public Prosecutor & counsel for the accused convicted and sentenced the accused in the manner as mentioned in Para-1 of this judgment.

Homicidal death of deceased Chhotu @ Tuntun @ Rajesh is not in dispute.

As far as involvement of the accused/appellant in the crime in question is concerned, PW-1 Nemichand, who lodged the report (Ex.P-1) in the Police Station, Dongergarh, has stated in his evidence that on the fateful day at about 4.00 p.m. in the evening he saw that deceased Chhotu @ Tuntun @ Rajesh was running and accused Makhan was chasing him. Deceased was saying that accused had burst his kettledrum (Nagada), therefore, he has to pay the money and on this accused Makhan attacked the deceased with knife. Accused/appellant also rushed towards him. He

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lodged the report. Burst kettledrum (Nagada) was taken into possession under Ex.P-2 and weapon of offence was taken into possession under Ex.P-3 from the residence of accused Makhan. PW-4 Ayodhya, who had also witnessed the crime in question, has corroborated the above evidence. In the cross-examination of these two eyewitnesses, the defence has not been able to elicit any circumstance, which makes the evidence of these two eyewitnesses unreliable or untrustworthy. PW-1 Nemichand, in Para-4 of his cross-examination has stated that even prior to that, on the occasion of Diwali accused entered his house carrying axe with him and he lodged the report in the police station of that incidence also. Moreover, the weapon of offence was recovered at the instance of accused/appellant from his residence, the same was sent for chemical examination and as per FSL report the weapon of offence i.e. swordstick (gupti) was found stained with blood.

Therefore, in view of the above, the involvement of accused/appellant in committing the crime in question is established.

Learned counsel for the accused/appellant argued that accused/appellant assaulted the deceased on a spur of moment, in a sudden quarrel, therefore, offence does not travel beyond Section 304 Part-II of the Indian Penal Code.

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In order to appreciate the argument advanced by learned counsel for the accused/appellant, we have perused the evidence of PW-1 Nemichand & PW-4 Ayodhya.

From the evidence of PW-1 Nemichand & PW-4 Ayodhya, it is clear that accused/appellant burst the kettledrum (Nagada) for which deceased asked the accused to pay the money, therefore, accused/appellant brought swordstick (Gupti) and ran after deceased Chhotu @ Tuntun @ Rajesh and attacked him on his neck, the vital part of organ and as per medical evidence of Dr. A.K. Tamrakar (PW-8) there was a stab wound on the neck, injury was on the trachea and cause of death was stab injury and same was homicidal in nature.

Therefore, looking to the nature of weapon of offence, place where the accused/appellant assaulted deceased and the manner in which the accused/appellant committed crime in question, we are of the considered opinion that the accused/appellant assaulted the deceased with the intention to cause his death. As such, we do not find any substance in the argument advanced by learned counsel for the accused/appellant.

In the result, we do not find any illegality or infirmity in the judgment of trial court, which requires no interference by this Court. The appeal being devoid of merit liable to be dismissed and same is dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Roshan

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20.2.06

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